

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE PIUS C.KURIAKOSE

MONDAY, THE 6TH AUGUST 2007 / 15TH SRAVANA 1929

WP(C).No. 31124 of 2005(E)

OS.230/1996 of ADDL.MUNSIFF COURT,CHERTHALA

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PETITIONER:

PRABHAKARAN, AGED 76, S/O.KRISHNAN,
CHEMBALIL, VAYALAR EAST VILLAGE,
CHERTHALA TALUK.

BY ADV. SRI.SHAJI THANKAPPAN

RESPONDENT:

XAVIER, AGGED 68, S/O.THOMAS,
NEYYPARAPPALLIL, CHERTHALA NORTH VILLAGE,
CHERTHALA TALUK.

BY ADV. SRI.V.L.SHENOY

THIS WRIT PETITION (CIVIL) HAVING BEEN FINALLY HEARD
ON 06/08/2007, THE COURT ON THE SAME DAY DELIVERED THE
FOLLOWING:

WPC : 31124 OF 2005

APPENDIX

PETITIONER'S EXHIBITS:

EXT.P1 : TRUE COPY OF THE IA NO.3097/04.

EXT.P2 : TRUE COPY OF THE DELAY PETITION (ia nO.3098/04)

EXT.P3 : TRUE COPY OF THE MEDICAL CERTIFICATE ISSUED TO THE PETITIONER.

EXT.P4 : TRUE COPY OF THE OBJECTION FILED BY THE RESPONDENT TO EXT.P1
PETITION.

EXT.P5 : TRUE COPY OF THE OBJECTION FILED BY THE RESPONDENT TO EXT.P2
PETITION.

EXT.P6 : TRUE COPY OF THE COMMON ORDER PASSED BY ADDL. MUNSIFF COURT,
CHERTHALA IN IA 3097/04 AND IA 3098/03 IN OS 230/96 DATED 20.10.05.

/TRUE COPY/

PA TO JUDGE.

PIUS C. KURIAKOSE, J.

W.P.(C) No. 31124 OF 2005

Dated this the 6th day of August, 2007

JUDGMENT

The persuasive submissions of the learned counsel for the petitioner Mr.Shaji Thankappan, notwithstanding, I am unable to agree that Ext.P6 order impugned in this Writ Petition under Article 227 is vitiated to the extent of justifying interference under the supervisory jurisdiction. Under Ext.P6, the learned Munsiff dismissed two applications. One application was for reviewing an earlier application for restoring an application under Order IX Rule 13 for setting aside the ex-parte decree which had been dismissed for default and the other application for condonation of delay of roughly 3 years caused in the matter of filing the restoration application. The ground on which the delay was sought to be explained was that on account of epilepsy, the petitioner was not in a position to attend the court. The petitioner did not adduce any evidence himself instead, he examined a doctor who had treated him and issued a medical certificate. Doctor's testimony was to the effect that if the medicines prescribed by him are regularly consumed, the petitioner will be able to have his daily chores without difficulty. That evidence coupled with the circumstance that the petitioner was not prepared to adduce evidence himself was taken note

of the learned Munsiff who decided in his discretion not to condone the delay caused in the matter. I do not think that the exercise of discretion by the learned Munsiff which is conferred by him under Section 5 of the Limitation Act is improper. The challenge against the impugned order fails. The Writ Petition will stand dismissed.

PIUS C. KURIAKOSE, JUDGE

btt

